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United States
Circuit Court of Appeals

For the Ninth Circuit. ✓

D. W. JOHNSTON, as Trustee in Bankruptcy
of the Estate of DUPONT MILLING &
SALES CORPORATION, Bankrupt,
Appellant,

vs.

JOHN P. McLAUGHLIN, Collector of Internal
Revenue,
Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the
Northern District of California, Southern Division.

FILED

SEP 23 1931

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

CHAS. H. SOOY, Esq., Mills Bldg., San Francisco,
Calif.,

NEIL E. LARKIN, Esq., 155 Montgomery St.,
San Francisco, Calif.,

FITZGERALD, ABBOTT & BEARDSLEY, Esq.,
Central Bank Bldg., Oakland, Calif.,

BROBECK, PHLEGER & HARRISON, Esqs.,
Crocker Bldg., San Francisco, Calif.,

MILTON NEWMARK, Esq., Crocker Bldg., San
Francisco, Calif.,

Attorneys for Plaintiff and Appellant.

GEORGE J. HATFIELD, United States Attorney,
7th & Mission Sts., San Francisco, Calif.

ESTHER B. PHILLIPS, Assistant United States
Attorney, 7th & Mission Sts., San Francisco,
Calif.

District Court of the United States, Northern Dis-
trict of California, Southern Division.

No. 18,680-S.

CIVIL SUIT TO RECOVER TAXES PAID.

D. W. JOHNSTON, as Trustee in Bankruptcy of
the Estate of DuPONT MILLING & SALES
CORPORATION, a Bankrupt,
Plaintiff,

vs.

JOHN P. McLAUGHLIN, Collector of Internal
Revenue,

Defendant.

COMPLAINT.

Comes now the above-named plaintiff and complains of above-named defendant, and for cause of action against said defendant alleges:

I.

That defendant is and at all times herein mentioned was the duly appointed, qualified and acting Collector of Internal Revenue of the United States for the First District of California.

II.

That DuPont Milling and Sales Corporation is and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of California.

III.

That in the month of December, 1929, the said DuPont Milling and Sales Corporation filed its voluntary petition in bankruptcy with the Clerk of the above-entitled court; that thereafter, pursuant to proceedings in said court in the cause therein entitled "In the Matter of the DuPont Milling and Sales Company, a Bankrupt, No. 18,735-K," said corporation [1*] was adjudicated a bankrupt; that thereafter, and on the 24th day of December, 1929, and in said proceedings, plaintiff was selected as trustee of said bankrupt estate, duly qualified as such, and ever since has been and now is the duly

*Page-number appearing at the foot of page of original certified Transcript of Record.

elected, qualified and acting trustee of the estate of said bankrupt.

IV.

That from and after the date of its incorporation, to wit, January, 1925, and until April 1, 1929, said DuPont Milling and Sales Corporation had and maintained its principal place of business at the City and County of San Francisco, State of California, and during said time was engaged in the milling of rice and other commercial pursuits in said city and state; that during all of said time one Paul A. DuPont was the President of said corporation, and as such actively managed and controlled all the business and affairs of said corporation.

V.

That on or about March 15, 1928, said Paul A. DuPont as president of said corporation, made, signed, acknowledged and filed a return of purported net income of said corporation for the preceding year; that said return set forth as said net income of said corporation the sum of \$12,448.72; that pursuant to the provisions of the Revenue Act of the United States of 1926, an income tax amounting to \$1410.58 was thereafter levied by the defendant upon said purported net income, and said last-named sum was thereafter paid by said corporation to said defendant upon the following dates and in the following amounts:

March 15, 1928	\$352.65
June 15, 1928	352.65
September 15, 1928	352.64
December 15, 1928	352.64 [2]

VI.

That said return and the statements therein made by said Paul A. DuPont are and were at the time of the making thereof, false and fraudulent, in that the said corporation had no net income and did not make any profit whatsoever during the year 1927, but on the contrary thereof, and in truth and in fact said corporation suffered and took a net loss during said year and was not liable for any tax upon any income for said year; that if the true facts had been stated in said return no tax liability would have accrued against said corporation, and said sum of \$1410.58 would not have been paid by said corporation or collected by defendant.

VII.

That after said 15th day of December, 1928, and before the commencement of this action, a claim for refund of said taxes, so as aforesaid paid to the defendant, was filed with the defendant as Collector of Internal Revenue as aforesaid, demanding a refund and repayment of said sum of \$1410.58, together with interest thereon at the rate of 6 per cent per annum from the dates and upon the amounts of said payments as aforesaid; that neither said sum nor any part thereof has been repaid; that said claim for refund has never been allowed by the defendant as Collector as aforesaid, but upon the contrary has been by him rejected and payment thereof refused.

VIII.

That at the time of the making of said return and said payments, said corporation was insolvent and

was largely indebted to persons, firms and corporations who are now creditors of said bankrupt estate; that there are not sufficient funds or property in said bankrupt estate to pay the claims proved against and now a charge against said [3] bankrupt estate, including the claim of the creditors aforesaid.

IX.

That the defendant has now the said sum of \$1410.58 so received by him as aforesaid, and holds the same for the use and benefit of the plaintiff.

WHEREFORE plaintiff prays judgment against said defendant in the sum of \$1410.58, together with interest thereon at the rate of 6 per cent per annum from the respective dates of said payments as aforesaid.

CHARLES H. SOOY.

CHARLES H. SOOY,

NEIL LARKIN.

NEIL LARKIN,

FITZGERALD, ABBOTT & BEARDSLEY.

FITZGERALD, ABBOTT & BEARDSLEY,

BROBECK PHLEGER & HARRISON.

BROBECK PHLEGER & HARRISON,

MILTON NEWMARK,

MILTON NEWMARK,

Attorneys for Plaintiff. [4]

United States of America,

State of California,

City and County of San Francisco,—ss.

D. W. Johnston, being first duly sworn, deposes and says:

That he is the Trustee in Bankruptcy of the Estate of DuPont Milling and Sales Corporation, a Bankrupt, and the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on information or belief, and as to those matters, that he believes it to be true.

D. W. JOHNSTON.

D. W. JOHNSTON,

Subscribed and sworn to before me this March 7th, 1930.

MARIE FORMAN.

[Seal]

MARIE FORMAN,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Mar. 7, 1930. [5]

[Title of Court and Cause.]

ANSWER.

Comes now the defendant, John P. McLaughlin, by his attorney, George J. Hatfield, United States Attorney for the Northern District of California, and for answer to the complaint in the above-entitled action, admits, denies and alleges as follows:

I.

Admits the matters and things in Paragraph I of said complaint.

II.

Admits the matters and things in Paragraph II of said complaint.

III.

Admits the matters and things in Paragraph III of said complaint.

IV.

Answering all the allegations contained in Paragraph IV of said complaint, the defendant admits that from and after the date of its incorporation, to wit, January, 1925, and until April 1, 1929, said DuPont Milling and Sales Corporation had and maintained its principal place of business at the City and County of San Francisco, State of California, and during said time was engaged in the milling of rice and other commercial pursuits in said City and State; admits that during all of said time one Paul A. DuPont was the president of said corporation, but denies, for lack of sufficient information to form a belief thereof, that said Paul A. DuPont actively managed and controlled all the business and affairs of said corporation. [6]

V.

Answering all the allegations contained in Paragraph V of said complaint, the defendant admits same and alleges further that W. B. Thompson, who was treasurer of the said corporation during the calendar year 1927, joined with Paul A. DuPont, as president of said corporation, in the preparation, signing, acknowledgment, and filing of the said return of the DuPont Milling and Sales Corporation.

VI.

Answering the allegations contained in Paragraph VI of said complaint, the defendant denies each and every allegation contained therein for lack of sufficient information to form a belief thereof.

VII.

Answering the allegations contained in Paragraph VII of said complaint, the defendant admits all of same, and alleges further that said claim for refund was forwarded by the defendant to the Commissioner of Internal Revenue, and that said Commissioner, after due consideration of said claim, rejected same in its entirety on August 16, 1929.

VIII.

Answering the allegations contained in Paragraph VIII of said complaint, the defendant denies each and every allegation contained therein, for lack of sufficient information to form a belief thereof.

IX.

Answering the allegations contained in Paragraph IX of said complaint, the defendant denies each and every allegation contained therein. [7]

And for a further and separate defense, the defendant alleges:

1. That on or about November 3, 1928, the Commissioner of Internal Revenue caused an examination to be made of the books and affairs of the DuPont Milling and Sales Corporation in connection with an audit of the income tax return filed by said

corporation for the calendar year 1927, and it was determined that said return was correct in all respects.

2. That on November 3, 1928, the plaintiff, DuPont Milling and Sales Corporation, by its then vice-president, Ralph D. Wilson, signed an "Agreement as to Final Determination of Tax liability"; that said agreement was completed on December 11, 1928, when same was signed by the then Commissioner of Internal Revenue, D. H. Blair, and approved by the Secretary of the Treasury, all in accordance with the provisions of Section 606 of the Revenue Act of 1928.

WHEREFOR, the defendant prays that the plaintiff take nothing by his action and that defendant have judgment for proper costs and for such other and further relief as may be just and proper in the premises.

GEO. J. HATFIELD,

United States Attorney,

Attorney for the Defendant.

By ESTHER B. PHILLIPS,

Asst. United States Attorney. [8]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

John P. McLaughlin, being first duly sworn, deposes and says:

That he is the Collector of Internal Revenue for the First District of California and the defendant in the above-entitled action; that he has read the foregoing answer and knows the contents thereof,

and that the same is true of his own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

JOHN P. McLAUGHLIN.

Subscribed and sworn to before me this 2d day of April, 1930.

[Seal] RAYMOND HASKINS,
Notary Public in and for the City and County of
San Francisco, State of California.

My commission expires Sept. 20, 1931.

Received April 4, 1930.

C. H. SOOY,
Atty. for Plaintiff.

[Endorsed]: Filed Apr. 9, 1930. [9]

[Title of Court and Cause.]

AGREED STATEMENT OF FACTS.

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the following facts, together with the facts alleged in the complaint and admitted by the answer in this cause, shall be taken as true, without prejudice, however, to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be true. It is further stipulated that this cause may be tried by the court sitting without a jury.

I.

That the Collector of Internal Revenue, defendant herein, accepted payment of income taxes from the DuPont Milling & Sales Corporation in the sum of \$1,410.58, for the tax year 1927, as shown by said corporation's income tax return, with no knowledge of the facts reported in such return other than as they were therein stated.

II.

That said income tax return referred to in Paragraph I above, should have reflected a net loss for said year 1927 instead of a net income of \$12,448.72 and upon which said net loss no income tax liability would have been due.

III.

That the books of account of the DuPont Milling & Sales Corporation had been intentionally prepared and kept under the direction of the president of said corporation, who owned and/or controlled more than majority of its corporate stock, in such manner as to conceal and for the purpose of concealing from those stockholders, directors and/or [10] creditors of the corporation, who were not acting in aid or assistance of him, the fact that the corporation had suffered a net loss for the year 1927.

IV.

That said income tax return for said year was likewise intentionally prepared in such way, and tax paid thereon, for the purpose of concealing from those stockholders, directors and creditors of the corporation, who were not acting in collusion with the

president of the corporation, the fact that it had suffered a net loss for the year 1927.

V.

That after said return was filed, an Internal Revenue agent of San Francisco, acting in the usual course, made an audit of the DuPont Milling & Sales Company's books and tax return for 1927, approved the tax return and recommended that an agreement be entered into with said taxpayer for a final determination of its tax liability for the year 1927 and that he was in ignorance that the facts were other than as they appeared upon the return and in the books of the DuPont Milling & Sales Corporation.

VI.

That the Commissioner of Internal Revenue, acting upon the basis of the tax return, the audit and the report of the Internal Revenue agent at San Francisco, referred to above in Paragraph V, entered into an agreement with the taxpayer for a final determination of the tax, without knowledge that the facts were other than as they appeared in the return and upon the audit.

VII.

That a photostatic copy of the corporate income tax return of the DuPont Milling & Sales Corporation for the tax year 1927, marked Exhibit "A," [post, p. 21], being a true and correct [11] copy of the original as filed by said corporation with the defendant, is attached hereto and is hereby admitted in evidence in this cause by the parties.

VII.

That a photostatic copy of the agreement entered into by and between the DuPont Milling & Sales Corporation and the Commissioner of Internal Revenue, marked Exhibit "B," with a photostatic copy of the approval of the Secretary of the Treasury marked Exhibit "C," being true and correct copies of the originals of said documents now on file with the Commissioner of Internal Revenue, are attached hereto and are hereby admitted in evidence in this cause by the parties.

FITZGERALD, ABBOTT and BEARDSLEY,
BROBECK, PHLEGER & HARRISON,
MILTON NEWMARK,
C. H. SOOY,
NEIL E. LARKIN,
Attorneys for Plaintiff.
GEO. J. HATFIELD,
GEO. J. HATFIELD,
U. S. Attorney.
ESTHER B. PHILLIPS,
ESTHER B. PHILLIPS,
Asst. U. S. Attorney,
(Attorneys for Defendant).

Dated: Feby. 2d, 1931.

(Here follow Exhibits "A," "B" and "C.")

[Endorsed]: Filed Feb. 2, 1931. [12]

[Title of Court and Cause.]

SUPPLEMENT TO AGREED STATEMENT OF
FACTS.

It is hereby stipulated and agreed by and between the parties hereto by their respective attorneys that the following is true:

I.

That there are now in existence creditors of the DuPont Milling and Sales Corporation who were creditors of said Corporation as of March 15, 1928.

II.

That parts of the credits owing to these creditors at the present time are made up of credits owing to such creditors as of March 15, 1928.

III.

That this stipulation is made as a supplement to the agreed statement of facts heretofore filed in this case and may be deemed a part of it.

Dated Feb. 13, 1931.

C. H. SOOY,
NEIL E. LARKIN,
(Attorneys for Plaintiff).
GEO. J. HATFIELD,
ESTHER B. PHILLIPS,
(Attorneys for Defendant).

[Endorsed: Filed Feb. 13, 1931. [13]

In the Southern Division of the United States District Court, for the Northern District of California.

No. 18,680-S.

D. W. JOHNSTON, as Trustee in Bankruptcy of the Estate of DuPONT MILLING & SALES CORPORATION, a Bankrupt,
Plaintiff,

vs.

JOHN P. McLAUGHLIN, Collector of Internal Revenue,
Defendant.

JUDGMENT.

This cause having come on regularly for trial upon the 3d day of February, 1931, before the Court sitting without a jury, a trial by jury having been waived by oral stipulation; Neil E. Larkin, Esquire, appearing as attorney for plaintiff and Esther B. Phillips, Assistant United States Attorney, appearing as attorney for defendant, and oral and documentary evidence having been *intorudced* and closed, and the cause having been submitted to the Court for consideration and decision, and Court after due deliberation having rendered its decision and ordered that judgment be entered herein in favor of defendant and for costs:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court that plaintiff take nothing by this action, and that defendant go hereof without day, and that

said defendant do have and recover of and from said plaintiff his costs herein expended taxed at \$15.00.

Judgment entered this 22d day of April, 1931.

WALTER B. MALING,
Clerk. [14]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED that on the 7th day of March, 1930, the above-entitled action was commenced by the filing of a complaint and the issuance of a summons; that thereafter and on or about the 4th day of April, 1930, the defendant appeared therein and filed his answer to said complaint.

AND BE IT FURTHER REMEMBERED that the above-entitled cause came on regularly for trial before the above-entitled court, sitting without a jury, a jury having been waived by both parties, on or about the 3d day of February, 1931, Honorable A. F. St. Sure, United States District Judge, presiding, Charles H. Sooy, Neil E. Larkin, Fitzgerald, Abbott & Beardsley, Brobeck, Phleger & Harrison and Milton Newmark appearing as attorneys for plaintiff and Geo. J. Hatfield, United States Attorney, and Esther B. Phillips, Assistant United States Attorney, appearing as attorneys for defendant, whereupon the following proceedings were had.

The parties thereupon made and filed the following stipulations in writing:

[Title of Court and Cause.]

AGREED STATEMENT OF FACTS.

It is hereby stipulated and agreed by and between the parties hereto by their respective attorneys, that the following facts, together with the facts alleged in the complaint and admitted by the answer in this cause, shall be taken as true, without prejudice, however, to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be true. It is further stipulated that this cause may be tried by the [15] Court sitting without a jury.

I.

That the Collector of Internal Revenue, defendant herein, accepted payment of income taxes from the DuPont Milling & Sales Corporation in the sum of \$1,410.58, for the tax year 1927, as shown by said corporation's income tax return, with no knowledge of the facts reported in such return other than as they were therein stated.

II.

That said income tax return referred to in Paragraph I above should have reflected a net loss for said year 1927 instead of a net income of \$12,448.72 and upon which said net loss no income tax liability would have been due.

III.

That the books of account of the DuPont Milling

& Sales Corporation had been intentionally prepared and kept under the direction of the president of said corporation, who owned and/or controlled more than a majority of its corporate stock, in such manner as to conceal and for the purpose of concealing from those stockholders, directors and/or creditors of the corporation, who were not acting in aid or assistance of him, the fact that the corporation had suffered a net loss for the year 1927.

IV.

That said income tax return for said year was likewise intentionally prepared in such way, and tax paid thereon, for the purpose of concealing from those stockholders, directors and creditors of the corporation, who were not acting in collusion with the president of the corporation, the fact that it had suffered a net loss for the year 1927.

V.

That after said return was filed, an Internal Revenue [16] Agent at San Francisco, acting in the usual course, made an audit of the DuPont Milling & Sales Company's books and tax return for 1927, approved the tax return and recommended that an agreement be entered into with said taxpayer for a final determination of its tax liability for the year 1927 and that he was in ignorance that the facts were other than as they appeared upon the return and in the books of the DuPont Milling & Sales Corporation.

VI.

That the Commissioner of Internal Revenue, acting upon the basis of the tax return, the audit and the report of the Internal Revenue agent at San Francisco, referred to above in Paragraph V, entered into an agreement with the taxpayer for a final determination of the tax, without knowledge that the facts were other than as they appeared in the return and upon the audit.

VII.

That a photostatic copy of the corporate income tax return of the DuPont Milling & Sales Corporation for the tax year 1927, marked Exhibit "A," being a true and correct copy of the original as filed by said corporation with the defendant, is attached hereto and is hereby admitted in evidence in this cause by the parties.

VIII.

That a photostatic copy of the agreement entered into by and between the DuPont Milling & Sales Corporation and the Commissioner of Internal Revenue, marked Exhibit "B," with a photostatic copy of the approval of the Secretary of the Treasury marked Exhibit "C," being true and correct copies of the originals of said documents now on file with the Commissioner of Internal Revenue, are attached

hereto [17] and are hereby admitted in evidence in this cause by the parties.

CHARLES H. SOOY,
NEIL E. LARKIN,
FITZGERALD, ABBOTT & BEARDSLEY,
BROBECK, PHLEGER & HARRISON,
MILTON NEWMARK,
Attorneys for Plaintiff.
GEO. J. HATFIELD,
U. S. Attorney,
ESTHER B. PHILLIPS,
Asst. U. S. Attorney,
(Attorney for Defendant).

Dated: Feb. 2d, 1931.

[Title of Court and Cause.]

SUPPLEMENT TO AGREED STATEMENT
FACTS.

It is hereby stipulated and agreed by and between the parties hereto by their respective attorneys that the following is true:

I.

That there are now in existence creditors of the Dupont Milling and Sales Corporation who were creditors of said corporation as of March 15, 1928.

II.

That part of the credits owing to these creditors at the present time are made up of credits owing to such creditors as of March 15, 1928.

III.

That this stipulation is made as a supplement to the agreed statement of facts heretofore filed in this case and [18] may be deemed a part of it.

A. H. SOOY,

NEIL E. LARKIN,

FITZGERALD, ABBOTT & BEARDSLEY,

BROBECK, PHLEGER & HARRISON,

MILTON NEWMARK,

Attorneys for Plaintiff.

GEO. J. HATFIELD,

U. S. Attorney,

ESTHER B. PHILLIPS.

Asst. U. S. Attorney,

(Attorneys for Defendant).

(Here follows Exhibit "A.") [19]

EXHIBIT "A."

UNITED STATES OF AMERICA,

TREASURY DEPARTMENT,

WASHINGTON.

March 29, 1930.

PURSUANT to Section 882 of the Revised Statutes, I hereby certify that the annexed is a true copy of Corporation Income Tax Returns for 1927, (with schedules and Certificate of Inventory—(Form 1126 attached), filed by Du Pont Milling and Sales Corporation, San Francisco, California, the originals of which are on file in this Department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By direction of the Secretary:

[Seal]

F. A. BIRGFELD,

Chief Clerk, Treasury Department.

MK WWB AMR EEA FFT CMC

CORPORATION INCOME TAX RETURN For Calendar Year 1927

File This Return with the Collector of Internal Revenue for Year Ended on or Before March 15, 1928

U. S. INTERNAL REVENUE
ACCEPTED
REVIEWED
1928 MAR 15 1166
1166
11-19-27
11-19-27

PRINT FULLY CORPORATION'S NAME AND BUSINESS ADDRESS

MR. FORT WILLIAMS & SALES CORPORATION
(Incorporated)

140 FRONT STREET
(Street and Number)

SAN FRANCISCO

CALIFORNIA

Date of Incorporation January 1925

Under the Laws of the State or Country California



KIND OF BUSINESS

1. Gross Sales from Trading or Manufacturing, Less Excess and Allowances
2. Less Cost of Goods Sold:

- (1) Inventory at close of preceding year
- (2) Merchandise bought for sale
- (3) Cost of manufacturing or otherwise producing goods
- (4) Total of items (1), (2), and (3)
- (5) Less Inventory at end of year

3. Gross Profit from Trading or Manufacturing (Item 1 minus Item 2)

4. Gross Profit from Operations Other Than Trading or Manufacturing (Include income of

FIELD AUDIT INTERNAL REVENUE AGENCY

- (1) Interest on Bank Deposits, Notes, Mortgages, and Corporate Securities
- (2) Royalties
- (3) Profit from Sale of Real Estate, Stocks, Bonds, and other Capital Assets
- (4) Dividends on Stock of Domestic Corporations
- (5) Other Income (including dividends received on stock of foreign corporations)

11. Total Income in Items 9 to 10

DEDUCTIONS

- 12. Compensation of Officers
- 13. Rent on Business Property
- 14. Repairs
- 15. Interest
- 16. Taxes
- 17. Losses by Fire, Storm, etc.
- 18. Bad Debts
- 19. Dividends
- 20. Depreciation
- 21. Depletion
- 22. Other Deductions

23. Total Deductions in Items 12 to 22

24. Net Income (Item 11 minus Item 23)

25. Net Income (Item 24 above)

26. Less Credits of \$2,000 for a domestic corporation having a net income of less than \$25,000

27. Balance (Item 25 minus Item 26)

28. Less: Income Tax Paid at Source

29. Income and Profits Taxes Paid to a Foreign Country or to a Possession of the United States by a domestic corporation

30. Balance of Tax (Item 28 minus Items 27 and 29)

An amended return must be marked "Amended" at top of return

Checks and drafts will be accepted only if payable to

IS THIS A CONSOLIDATED RETURN?

1 013 951 14

105 678 96
1 009 446 88
113 678 63
1 328 804 48
512 369 22
1 016 435 26
-2 484 10
96 798 62

13 200 00
16 145 00
907 34
734 64
896 92
4 534 06
6 775 57
9 720 69
12 124 02
4 397 55

COMPUTATION OF TAX

12 448 72

2 000 00

10 448 72

1 410 59

1 410 58

81 865 81
12 448 72

1 410 59



SCHEDULE A—COST OF MANUFACTURING OR PRODUCING GOODS

Items	Amount	Items	Amount
Salaries and wages	\$47672.87		
Material and supplies	57873.39		
Electricity	601.47		
General mill	411.55		
Contract Light Meter	7119.54		

SCHEDULE B—PROFIT FROM SALE OF REAL ESTATE, STOCKS, BONDS, ETC. (See Instruction 8)

1. Kind of Property	2. Date Acquired	3. Amount Received	4. Deductions Allowable From Acquisition	5. Cost	6. Value as of March 1, 1933	7. Improvements	8. Net Profit (Enter as loss if)

State how property was acquired.

SCHEDULE C—COMPENSATION OF OFFICERS (See Instruction 17)

1. Name or Office	2. Official Title	3. Total Received or Received To Receive		4. Salaries or Stock Owned		5. Amount of (Enter as loss if)
		Common	Preferred	Common	Preferred	
Paul A. Du Font	Pres.	2474.9		1250		5000.00
Chas. A. Carlston	V. Pres.	"	"	1125		3600.00
Ralph E. Wilson	Asst. Secy.	"	"	1125		3600.00

SCHEDULE D—COST OF REPAIRS (See Instruction 14)

1. Year	2. Amount (Enter as loss if)	3. Description	4. Taxes Paid (See Instruction 16)	5. Amount (Enter as loss if)
1928		Repairs	Local	1907.26
		Corporation Taxes		172.13
				224.79

SCHEDULE E—EXPLANATION OF LOSSES BY FIRE, STORM, ETC. (See Instruction 17)

1. Kind of Property	2. Date of Loss	3. Cause	4. Value as of March 1, 1933	5. Amount of Insurance	6. Deductions Allowable From Acquisition	7. Insurance and Service Fees	8. Net Loss (Enter as item if)

State how property was acquired.

SCHEDULE G—BAD DEBTS (See Instruction 18)

1. Year	2. Date of Account	3. Amount	4. Description	5. Amount of Deduction	6. Previous years	7. This year
1927						
1928						
1929						
1928		4534.06				

SCHEDULE I—EXPLANATION OF DEDUCTION FOR DEPRECIATION (See Instruction 20)

1. Kind of Property (If buildings, file material of which constructed)	2. Date Acquired	3. Cost When Acquired	4. Depreciable Life (See Instruction 20)	5. Cost (Excluding Land)	6. Value as of March 1, 1933 (Estimated if loss)	7. Previous years	8. This year

Attach a separate sheet if any of the above schedules do not provide sufficient space

ITEM	Beginning of Taxable Year		End of Taxable Year	
	Amount	Total	Amount	Total
ASSETS				
1. Cash		\$ 7,864.22		\$ 22,814.68
2. Notes receivable		6,751.45		7,031.03
3. Accounts receivable				
Less reserve for bad debts	\$ 156,321.07	156,821.07		148,514.90
4. Inventories:				
Raw materials	\$ 17,982.78		\$ 39,397.53	
Work in process				
Finished goods	87,586.18	172,971.59		
Supplies				
5. Investments:				
Calculations of a State, Territory, or any political subdivision				
Bonds, debentures, or other securities of a State, Territory, or political subdivision				
Securities issued under the Federal Farm Loan Act, or under				
such Act as amended				
Obligations of the United States or its possessions				
6. Loans (describe fully):				
7. Deferred charges:				
Prepaid insurance	2,238.52		2,591.88	
Prepaid taxes	3,067.04		3,030.54	
Organization & Contracts	7,926.88	13,252.45	10,026.88	15,509.30
8. Capital assets:				
Land				
Buildings				
Machinery and equipment	56,144.92		57,259.53	
Furniture and fixtures	2,173.56		3,158.06	
Delivery equipment	8,512.50		2,512.50	
Less reserves for depreciation and depletion	61,836.98		62,927.19	
9. Prepaid				
10. Good will		10,000.00		10,000.00
11. Other assets (describe fully):		36,100.00		36,100.00
Bank Stock				
Discount Capital Stock	2,518.80		2,518.80	
Registered Trade Marks	1,500.00		1,500.00	
	106.75		106.75	
12. Total Assets		4,324.55		4,324.55
		402,629.59		519,590.77
LIABILITIES				
13. Liabilities payable:				
14. Accounts payable		99,000.00		214,812.20
15. Accrued expenses (describe fully):		2,300.09		7,195.71
Reserve for Insurance	60.00		230.00	
16. Other liabilities (describe fully):		60.00		230.00
Bankers' Acceptances	58,037.50		100,500.00	
Trade Sold	58,595.06		8,537.07	
17. Capital stock:				
Preferred stock (new stock in treasury)				
Common stock (new stock in treasury)	182,620.00	182,620.00	185,600.00	186,600.00
18. Surplus	2,017.04	2,017.04	2,715.79	2,815.79
19. Unaffiliated profits				
20. Total Liabilities		402,629.59		519,590.77

Remarks

1. Net income from Item 8, page 1 of the return	12,448.72	1,477.82
2. Net income from operations of a fleet, Territory, or any political subdivision of a State, Territory, or any political subdivision of a foreign country, as reported on the return under Item 10, page 1A, of the return		
3. Increase or decrease in the value of the return under Item 10, page 1A, of the return		
4. Interest on obligations of the United States at the various rates of interest, as reported on the return under Item 11, page 1B, of the return		
5. Other items which are taxable income for the year		
6. Charitable contributions for which a deduction is claimed on the return	12,448.72	1,477.82
7. Charitable contributions for which a deduction is claimed on the return		
8. Charitable contributions for which a deduction is claimed on the return		
9. Charitable contributions for which a deduction is claimed on the return		
10. Charitable contributions for which a deduction is claimed on the return		
11. Charitable contributions for which a deduction is claimed on the return		
12. Charitable contributions for which a deduction is claimed on the return		
13. Charitable contributions for which a deduction is claimed on the return		
14. Charitable contributions for which a deduction is claimed on the return		
15. Charitable contributions for which a deduction is claimed on the return		
16. Charitable contributions for which a deduction is claimed on the return		
17. Total of Items 1 and 11	10,970.90	2,564.00
18. Total of Items 2 through 16	2,017.04	2,564.00
19. Total of Items 17 and 18	12,987.94	2,564.00
20. Total of Items 1 through 19	10,272.15	2,564.00
21. Total of Items 1 through 19	2,715.93	2,564.00

QUESTIONS

(3) Did substantially the same conditions, as are set out in the Affiliations Schedules for 1929 or prior years, obtain during the entire taxable year 1927-28? **Yes.** If the answer to this question is "no," a statement setting forth the reasons therefor should be attached to the return. If there have been substantial changes in a complete schedule of such changes should be submitted on Form 852, Affiliations Schedule 8, for each company which has been added to the schedule. Any changes have come into the affiliated group since 1926, Forms 851, 852, 853, and 854, are required for the entire group for the preceding year.

(4) Did the corporation file a consolidated return for the preceding taxable year?

PREDECESSOR BUSINESS

5. Did the corporation file a return under the same name for the preceding taxable year? **Yes.** Was the corporation in any way an outgrowth, result, continuation, or reorganization of a business or businesses in existence during this or any prior year since December 31, 1917-18? **Yes.** If answer is "yes," give name and address of each predecessor business, and the date of the change in entity.

J. H. BUNT, CARLSON & CO.,
24 FRONT STREET, San Francisco, California

Upon such change were any such values increased or decreased? **Yes.** The answer is "yes," stating balance sheets of old business and opening balance sheets of new business must be furnished.

BASIS OF RETURN

6. Describe fully made on the basis of actual receipts and disbursements. **Yes.** If not, describe fully what other basis of method was used in computing net income.

1. Schedule covering Items 4 and 22

LIST OF ATTACHED SCHEDULES

10. Enter below a list of all the schedules accompanying this return, giving for each a brief title and the schedule number. The name and address of the taxpayer should be placed on each separate schedule accompanying the return.

KIND OF BUSINESS

1. By means of the key letters given below, identify the corporation's main income-producing activity with one of the general classes, and follow this by a special description of the business sufficient to give the information called for under each class.

A—Agriculture, including fishing, logging, ice harvesting, mining and quarrying, including sand and oil sales, and also the leasing of such property. State the product or products. **E**—Manufacturing. State the product and the process. **F**—Retail and wholesale trade. State the goods and also equipment and installing accessories, buildings, bridges, railroads, ships, etc. **G**—Service—domestic and with systems, offices, or machinery, without their manufacture. State nature of service. **H**—Water, gas, electric, heat, and other utilities. **I**—Public utilities—gas (natural, coal, or water); electric light or power (hydro or steam); telephone, telegraph, or other communications; radio, television, or other communications. **J**—Public utility—gas (natural, coal, or water); electric light or power (hydro or steam); telephone, telegraph, or other communications; radio, television, or other communications. **K**—Transportation. State the mode of transportation, and the nature of the business. **L**—Finance. State the nature of the business. **M**—Insurance. **N**—Other business not falling in above classes (a) because of combining several of them with no predominant business, or (b) for failure to name or more of the above general classes, where the same product is concerned, should report business as identified with but one of the above general classes; for example, concern in A, B, C, and D, also with class A or B, concern in C (manufacturing) which, own or contract their own source of material supply in A or B, and also transport, sell, or install their own machinery or own the source of supply of materials used exclusively or mainly in their contracted work; concern in E, F or G may own or control the source of their production material used by them with A, B, or C. State their own merchandise, but the production would identify them with A, B, or C.

M—Finance.

(3) Main income-producing business (give specifically the information called for under each key letter, also whether selling as principal, or as agent on commission; state if inactive or in liquidation).

AFFILIATIONS WITH OTHER CORPORATIONS

SEE INSTRUCTION #8

4. Does the corporation own 95 per cent or more of the outstanding capital stock of another domestic corporation or of other corporation? **No.**

5. Is over 95 per cent or more of your outstanding capital stock owned by another corporation?

6. Is 95 per cent or more of your outstanding capital stock as well as 95 per cent of the net assets of the corporation owned by the same individual or partnership or by the same individuals, partnership, or corporations in substantially the same proportion? **No.**

7. If the answer to questions 4, 5, and 6, or to any of them, is "yes," answer the following: (a) Did the corporation file Forms 861, 862, 863, and 863A for the taxable year 1927 or subsequent taxable years? **Yes.** If the answer to this question is "yes," these forms will not be required, except under the circumstances described in items 4, 5, and 6, or to any of them, is "yes," procure from the Collector of Internal Revenue for your district, Forms 861, 862, 863, and 863A, Affiliations Schedules 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11, and file the same with this return. If the answer to this question is "no," question (b) need not be answered.

AFFIDAVIT

We, the undersigned, president and treasurer of the corporation for which this return is made, being severally duly sworn, each for himself depose and say that this return, including the schedules and attachments thereto, is a true and correct statement of the income, profits, and losses of the corporation and of the assets and liabilities thereof, for the taxable year as stated, pursuant to the Revenue Act of 1926 and the Regulations thereunder issued and in conformity therewith.

Seems to and subscribed before me this _____ day of _____, 1928

(Signature of officer, administrator, etc.)

NOTARIAL SEAL

CORPORATE SEAL

DU PONT MILLING & SALES CORPORATION
140 Front Street,
San Francisco California.

ITEM 4.

Mill Revenue	\$78713.08	
Commissions	3834.78	
Interest	1432.08	
Miscellaneous	679.06	
Storage	1806.35	
Drayage	8602.13	
Hulls	1731.15	
	<hr/>	
		\$96798.63

* * * * *

ITEM 22.

(c)

Insurance	\$3623.54	
Telephone & Cables	3512.63	
General	1522.00	
Stationery	712.56	
Legal	349.96	\$9720.69
	<hr/>	

(d)

Drayage	\$9053.77	
Auto	816.20	
Freight	2254.05	\$12124.02
	<hr/>	

(e)

Advertising	\$49.06
Travel	1637.89
Inspection Fees	151.50

Commissions	216.00	
Miscellaneous	1207.15	
Collections	1015.95	
Charity	50.00	\$4327.55
	<hr/>	

A-5.

— 1126

U. S. Internal Revenue **CERTIFICATE OF INVENTORY**
(To be filed with Collector of Internal Revenue with Income Tax Return)

For Calendar Year 1927

Or for fiscal year begun January 1, 1927, and ended December 31, 1927.

Name—Du Pont Milling & Sales Corporation.

Address—140 Front Street, San Francisco, California.

Number of sheets
submitted herewith—

PRINCIPAL CERTIFICATE

I swear (or affirm) that the closing inventory of the taxpayer named above, amounting to \$212369.22, was taken under my direction, and that to the best of my knowledge and belief is true and complete in every respect; that the method of pricing the raw material, work in process, and finished goods was at *cost or market whichever is lower that I have carefully read all of the instructions on the reverse side of this form; that this inventory was taken in accordance therewith; and that the following-named persons whose separate certificates are subscribed hereon or attached hereto are the officers and employees under whose personal direction the various parts of this inventory were taken:

Name	Title or position	Part of inventory taken	Amount
W. B. Thompson	Secretary	Rice & Rice Products	\$163950.84
F. C. Kearfott	Accountant	" " " "	\$ 38581.28
James W. Means	Supt. Feed Mill	Feed Products	\$ 6000.72
Wm. P. Lapoint	Clerk	Misc. Mdse.	\$ 1897.82
N. Toner	Asst. Book-keeper	" "	\$ 1938.56
.....			\$
.....			\$

Sworn to and subscribed before me this 10 day of March, 1928.

W. B. THOMPSON,
(Signature)

M. Hugo
(Signature of officer administering oath)

I. R. Agent
(Title)

Secy-Treas.
(Title)

*State "cost" or "cost or market, whichever is lower." If any other basis was used, describe fully, state why used and date on which inventory was last reconciled with stock.

SUBSIDIARY CERTIFICATE

I (or we), the undersigned employees of the taxpayer named above, swear (or affirm) that I (or we) personally directed and observed the taking of the parts of the inventory set opposite my (or our) names, and, to the best of my (or our) knowledge and belief, is true and complete in every respect; that I (or we) have carefully read the instructions on the reverse side of this form and that the parts of the inventory for which I am (or we are) responsible was taken in accordance therewith.

Signature	Title or position	Part of inventory taken
W. B. Thompson	Secretary	Rice & Rice Products
F. C. Kearfott	Accountant	" " " "
James W. Means	Supt. Feed Mill	Feed Products
Wm. P. Lapoint	Clerk	Misc. Mdse.
N. Toner	Asst. Book-keeper	" "

Sworn to and subscribed before me this 10th day of March, 1928.

[Seal]

W. W. HEALEY,

(Signature of officer administering oath)

Notary Public in and for the City and County of San Francisco.

(Title)

EXHIBIT "B."

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,
WASHINGTON.

March 29, 1930.

Pursuant to Section 882 of the Revised Statutes, I hereby certify that the annexed is a true copy of Agreement as to final Determination of Tax Liability for 1927, in the amount of \$1,410.58, signed November 3, 1928 by the DuPont Milling and Sales Corporation, San Francisco, California, the originals of which are on file in this department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed on the day and year first above written.

By direction of the Secretary.

F. A. BIRGFELD,
Chief Clerk, Treasury Department.

WVP EA FFT CMC.

AGREEMENT AS TO FINAL DETERMINA-
TION OF TAX LIABILITY.

This Agreement, made in duplicate under and in pursuance of Section 606 of the Revenue Act of 1928, by and between DuPont Milling and Sales Corporation a taxpayer residing at, or having its principal place of business at at 140 Front Street, San Francisco, California, and the Commissioner of Internal Revenue;

Whereas, there has been a determination of the tax liability of said taxpayer in respect of Federal Income Taxes for the year 1927 in the principal sum of One Thousand Four Hundred Ten Dollars and Fifty Eight Cents (\$1,410.58); and

Whereas, said taxpayer hereby agrees to this determination and consents to the assessment and collection of any deficiency in tax included in the amount of the principal [20] tax liability so determined, together with any penalty or interest, applicable thereto as provided by law, and/or to accept any abatement, credit, or refund, made in accordance with such determination, together with any interest due thereon as provided by law;

Now, This Agreement Witnesseth, that said taxpayer and said commissioner of Internal Revenue hereby mutually agree that the principal amount of such liability so determined shall be final and conclusive if and when this agreement is approved by the Secretary of the Treasurer or the Undersecretary.

In Witness Whereof, the above parties have subscribed their names to these presents in duplicate.

Signed this 3rd day of November, 1928.

DUPONT MILLING & SALES CORPORATION,

Taxpayer.

(Seal) By RALPH D. WILSON, V. P.

Signed Dec. 11, 1928.

D. H. BLAIR,

Commissioner of Internal Revenue.

The above agreement has been approved by the

Secretary of the Treasurer in accordance with the provisions of Section 606 of the Revenue Act of 1928, the approval being specifically enumerated on Schedule 620.

Dated Dec. 11, 1928.

BF FFL CPS CBA E-1

(See Reverse Side)

INSTRUCTIONS.

The agreement should be signed by the taxpayer, if possible. Whenever it is necessary to have the agreement executed by an attorney or agent on behalf of the taxpayer, an authenticated copy of the document, specifically [21] authorizing such agent or attorney to sign the agreement on behalf of the taxpayer shall accompany the agreement.

If the agreement is signed by the administrator, executor, or trustee on behalf of an estate or trust, an attested copy of the letters testamentary, or the order of the court vesting such person with authority to so act, together with a certificate to the effect that such authority remains in full force and effect must be submitted with the agreement.

Where the taxpayer is a corporation, the agreement shall be signed by the corporate name, followed by the signature and title of an officer having authority to bind the corporation, and his signature shall be attested by the secretary of the corporation over the corporate seal. In the absence of a seal a certified copy of the resolutions of the Board of Directors specifically authorizing an officer or officers to enter into the agreement shall be filed with the agreement.

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EXHIBIT "C."

UNITED STATES OF AMERICA,
TREASURY DEPARTMENT,
WASHINGTON.

December 23, 1930.

Pursuant to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States), I hereby certify that the annexed is a true copy of Schedule No. 620, dated December 11, 1928, approved December 13, 1928 by A. W. Mellon, Secretary of the Treasury, showing approval of agreement as to final determination of income tax liability for 1927, [22] in the amount of \$1,410.58, in the case of DuPont Milling and Sales Corporation; on file in this Department.

In Witness Whereof, I have hereunto set my hand and caused the seal of the Treasury Department to be affixed on the day and year first above written.

By direction of the Secretary of the Treasury.

(Seal)

F. A. BIRGFELD,

Chief Clerk, Treasury Dept.

Thesaur Amer. Systent Sigii.

RES JP EEA B.

TREASURY DEPARTMENT,
WASHINGTON.

December 11, 1928.

Officer of Commissioner of Internal Revenue.

The Honorable,

The Secretary of the Treasury.

Sir:

I have the honor to submit for your consideration the following schedule of cases proposed to be closed by agreement, and ask your approval of my action in entering into the agreements with the taxpayers, listed as to final determination for the years indicated of income tax.

Name of Taxpayer	Years Covered by Agreement	Tax Liability.
DuPont Milling and Sales Corporation.	1927	\$1,410.58

Respectfully,

D. H. BLAIR,
Commissioner.

Schedule W 620.

TREASURY DEPARTMENT,
Office of the Secretary.

December 13, 1928.

Approved.

A. W. MELLON,
Secretary of the Treasury.

Letters mailed Dec. 14, 1928. [23]

AND BE IT FURTHER REMEMBERED that thereafter the said Court ordered that judgment be entered for defendant, to which ruling and order of the Court the plaintiff then and there duly excepted and hereby designates as

PLAINTIFF'S EXCEPTION No. 1.

AND BE IT FURTHER REMEMBERED that thereafter and pursuant to said last-mentioned order of said Court, to wit, on or about the 22d day of April, 1931, judgment was entered in favor of the defendant and against plaintiff, to which judgment plaintiff then and there duly excepted and hereby designates as

PLAINTIFF'S EXCEPTION No. 2.

Now, within the time allowed by law, plaintiff's counsel presents the foregoing as their proposed bill of exception in the above-entitled action, and prays that the same may be settled and allowed.

Dated: this 10th day of July, 1931.

C. H. SOOY.

C. H. SOOY.

NEIL E. LARKIN.

NEIL E. LARKIN.

FITZGERALD, ABBOTT & BEARDSLEY.

FITZGERALD, ABBOTT & BEARDSLEY.

BROBECK, PHLEGER & HARRISON.

BROBECK, PHLEGER & HARRISON.

MILTON NEWMARK,

MILTON NEWMARK.

STIPULATION FOR ALLOWANCE OF BILL
OF EXCEPTIONS.

IT IS HEREBY STIPULATED AND AGREED that the foregoing bill of exceptions was presented by plaintiff within the time allowed by law therefor and that the same is a true and correct copy of the proceedings had at the trial of the above-entitled action, and that the same may be certified, [24] allowed and settled as provided by law and the practice of said court by Hon. A. F. St. Sure, United States District Judge, who presided at the trial of said cause.

Dated: July 10, 1931.

C. H. SOOY.

C. H. SOOY,

NEIL E. LARKIN,

NEIL E. LARKIN,

FITZGERALD, ABBOTT & BEARDSLEY.

FITZGERALD, ABBOTT & BEARDSLEY,

BROBECK, PHLEGER & HARRISON.

BROBECK, PHLEGER & HARRISON,

MILTON NEWMARK.

MILTON NEWMARK,

Attorneys for Plaintiff.

GEO. J. HATFIELD,

U. S. Attorney,

GEO. J. HATFIELD,

By ESTHER B. PHILLIPS.

ESTHER B. PHILLIPS,

Asst. U. S. Attorney,

Attorneys for Defendant.

ORDER SETTLING AND ALLOWING BILL
OF EXCEPTIONS.

I, the undersigned, Judge of the District Court of the United States, do hereby certify that the foregoing bill of exceptions having been presented within the time allowed by law therefor, is a true and correct copy of the proceedings had at the trial of said action, and do hereby settle and allow the same and order that said bill of exceptions be filed with the Clerk of this court.

Dated: Aug. 4, 1931.

A. F. ST. SURE,
United States District Judge. [25]

Receipt of a copy of the within plaintiff's proposed bill of exceptions is hereby admitted this — day of June, 1931.

_____,
Attorney for Defendant.

Receipt of a copy of the within plaintiff's proposed bill of exceptions is hereby admitted this June 26, 1931.

GEO. J. HATFIELD,
Attorney for Defendant.

[Endorsed]: Filed Aug. 4, 1931. [26]

[Title of Court and Cause.]

PETITION FOR APPEAL.

The above-named plaintiff D. W. Johnston, as Trustee in Bankruptcy of the Estate of DuPont Milling and Sales Corporation, considering him-

self aggrieved by the judgment rendered and entered in the above-entitled action on the 22d day of April, 1931, which said judgment is to the effect that plaintiff take nothing by his complaint, and that defendant have judgment against plaintiff for his costs, hereby appeals from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, and said plaintiff prays that this, his appeal to said United States Circuit Court of Appeals for the Ninth Circuit may be allowed, and that a transcript of the record, papers and pleadings upon which said judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: San Francisco, California, this 25th day of June, 1931.

C. H. SOOY,

C. H. SOOY,

NEIL E. LARKIN.

NEIL E. LARKIN,

FITZGERALD, ABBOTT & BEARDS-
LEY.

FITZGERALD, ABBOTT & BEARDS-
LEY,

BROBECK, PHLEGER & HARRI-
SON.

BROBECK, PHLEGER & HARRI-
SON,

MILTON NEWMARK.

MILTON NEWMARK,

Attorneys for Plaintiff.

[Endorsed]: Filed Jun. 25, 1931. [27]

[Title of Court and *Costs.*]

ASSIGNMENT OF ERRORS.

Comes now the plaintiff above named and files the following assignment of errors upon which he will rely upon the prosecution of his appeal in the above-entitled action from the judgment entered therein on the 22d day of April, 1931:

1. That the evidence was and is insufficient to justify the decision and judgment of said District Court.

2. That said judgment of the District Court is contrary to the evidence.

3. That said District Court erred in rendering and entering judgment for defendant in said action in that said judgment is contrary to the law and the facts.

WHEREFORE said plaintiff prays that judgment of the District Court of the United States for the Northern District of California, Southern Division, hereinabove referred to, be reversed, and for such other and further relief as may be proper in the premises.

C. H. SOOY,

C. H. SOOY,

NEIL E. LARKIN,

NEIL E. LARKIN,

FITZGERALD, ABBOTT & BEARDS-
LEY,

FITZGERALD, ABBOTT & BEARDS-
LEY,

BROBECK, PHLEGER & HARRISON.
SON.

BROBECK, PHLEGER & HARRISON,
SON,

MILTON NEWMARK,
MILTON NEWMARK,
Attorneys for Plaintiff.

[Endorsed]: Filed Jun. 25, 1931. [28]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL AND FIXING
AMOUNT OF BOND.

On motion of C. H. Sooy, one of the attorneys for the plaintiff above named,—

IT IS ORDERED that the appeal of said plaintiff to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment rendered and entered in the above-entitled action on the 22d day of April, 1931, be, and the same is hereby allowed, and that a duly authenticated transcript of the record, papers and proceedings on which said judgment was made be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that said plaintiff file with the Clerk of this court a good and sufficient bond in the sum of \$250.00 conditioned as required by law, to cover prosecution of this appeal and damages, judgment and costs, and that

said bond on appeal shall operate as and constitute a supersedeas bond.

Dated: June 25, 1931.

A. F. ST. SURE,
United States District Judge.

Receipt of copy of the within order allowing appeal and fixing amount of bond is hereby admitted this 26 day of June, 1931.

GEO. J. HATFIELD,
Attorney for Defendant.

[Endorsed]: Filed Jun. 26, 1931. [29]

PREMIUM CHARGED FOR THIS BOND IS
\$10.00 PER ANNUM.

AMERICAN SURETY COMPANY OF NEW
YORK.

Organized in 1884.

[Title of Court and Cause.]

UNDERTAKING FOR COSTS ON APPEAL.

WHEREAS, D. W. Johnston, as Trustee in Bankruptcy of the Estates of Dupont Milling & Sales Corporation, a Bankrupt, in the above-entitled action is about to appeal to the United States Circuit Court of Appeals for the Ninth Circuit from a judgment entered against him in said action in said United States District Court, in and for the Northern District of California, Southern Division, in favor of John P. McLaughlin, and for costs of suit,—

NOW, THEREFORE, in consideration of the premises, and of such appeal, the undersigned, American Surety Company of New York, a corporation duly organized and existing under the laws of the State of New York, and duly authorized to transact a general surety business in the State of California, does undertake and promise on the part of the appellant, that the said appellant will pay all costs which may be awarded against him on the appeal, or on a dismissal thereof, not exceeding the sum of Two Hundred Fifty (\$250.00) Dollars, to which amount it acknowledges itself bound.

It is further stipulated as a part of the foregoing bond, that in case of the breach of any condition thereof, [30] the above-named District Court may, upon notice to the Surety above named, American Surety Company of New York, of not less than ten days, proceed summarily in the action, suit, case or proceeding in which the same was given to ascertain the amount which such sureties are bound to pay on account of such breach, and render judgment therefor against them, and award execution therefor.

Signed and Sealed at San Francisco, California, this 26th day of June, 1931.

AMERICAN SURETY COMPANY OF
NEW YORK.

By K. F. WARRACK,
Resident Vice-president.

Attest: B. DUCRAY,
Resident Assistant Secretary.

[Seal]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Said Court:

Sir: Please prepare record on appeal to the Circuit Court of Appeals for the Ninth Circuit in the above-entitled matter, and include therein the following papers and documents:

Complaint.

Answer.

Stipulation of facts and waiver of jury, together with three exhibits attached to said stipulations marked Exhibits "A," "B," and "C."

Judgment.

Bill of exceptions.

Petition for appeal.

Assignment of errors.

Order allowing appeal and fixing amount of bond.

Bond on appeal.

Citation on appeal with admission of service.

This praecipe.

C. H. SOOY,

C. H. SOOY,

NEIL E. LARKIN.

NEIL E. LARKIN,

FITZGERALD, ABBOTT & BEARDSLEY,

FITZGERALD, ABBOTT & BEARDSLEY,

BROBECK, PHLEGER & HARRISON,
BROBECK, PHLEGER & HARRISON,
MILTON NEWMARK,
MILTON NEWMARK,
Attorneys for Plaintiff.

Receipt of a copy of the within praecipe is hereby admitted this June 25, 1931.

GEO. J. HATFIELD,
Attorney for Defendant.

[Endorsed]: Filed Jun. 26, 1931. [32]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing 32 pages, numbered from 1 to 32, inclusive, to be a full, true and correct copy of the record and proceedings as enumerated in the praecipe for record on appeal, as the same remain on file and of record in the above-entitled suit, in the office of the Clerk of said court, and that the same constitutes the record on appeal to the United States Circuit of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$13.55; that the said amount

WITNESS, the Honorable A. F. ST. SURE
United States District Judge for the Northern Dis-
trict of California, this 25th day of June, A. D.
1931.

A. F. ST. SURE,
United States District Judge.

Rec'd this 26 day of June, 1931.

GEO. J. HATFIELD.

Filed Jun. 26, 1931. [34]

[Endorsed]: No. 6586. United States Circuit
Court of Appeals for the Ninth Circuit. D. W.
Johnston, as Trustee in Bankruptcy of the Estate
of DuPont Milling & Sales Corporation, Bank-
rupt, Appellant, vs. John P. McLaughlin, Collector
of Internal Revenue, Appellee. Transcript of
Record. Upon Appeal from the United States
District Court for the Northern District of Cali-
fornia, Southern Division.

Filed August 21, 1931.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Ap-
peals for the Ninth Circuit.